

2. Petitioner's diagnoses include ataxia, polymyalgia rheumatic, restless leg syndrome, osteoarthritis and GERD. She has extreme fatigue, weakness and issues with muscle coordination. She is 83 years old.
3. Petitioner's gross monthly income is \$1,053.54.
4. On November 22, 2013, the agency completed a Long-Term Care Functional Screen (LTCFS) for the Petitioner. The screener determined that the Petitioner had the following needs:

Meal Preparation – Level 2

Laundry/Chores – Level 1

Mental Health Needs – Level 2

Petitioner was noted to use a walker in her home, a shower chair and grab bar for bathing and a grab bar and adaptive equipment for toileting. Petitioner was found to be independent with all Activities of Daily Living (ADLs) and all other Instrumental Activities of Daily Living (IADLs) other than those noted above. The agency found the Petitioner was functionally eligible at a Nursing Home LOC – ICF.

5. On February 21, 2014, the agency completed a LTCFS for the Petitioner. The screener determined that the Petitioner had the following needs:

Laundry/Chores – Level 1

Petitioner was found to be independent with all ADLs and all other IADLs. The screener noted that the Petitioner's ataxia and polymyalgia rheumatic conditions cause intermittent flare-ups resulting in extreme fatigue, weakness and issues with muscle coordination. During these periods, she is in need of assist to bathe and safely get in and out of the tub and wash hard to reach areas. It was noted that the Petitioner is independent with meal preparation and is still driving so she can complete grocery shopping. The screener noted that the Petitioner mental health condition present at the time of the previous screen in November, 2013 was related to her shingles condition and inability to prepare meals. The condition has since resolved.

The agency found the Petitioner was not functionally eligible at a Nursing Home LOC.

6. On February 21, 2014, the agency issued a Notice of Change in Level of Care to the Petitioner informing her that it had determined that she no longer meets the nursing home level of care. It also informed her that she remains eligible for FC at the non-nursing home level of care.
7. On February 28, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.
8. On May 3, 2014, the agency reviewed and updated the LTCFS for the Petitioner. The screener concluded the Petitioner has the following needs:

Bathing – Level 1 – Petitioner needs assist to transfer in and out of tub safely but is independent with bathing tasks and sink-side bathing.

Transferring – Level 1 – ataxia condition affects Petitioner's muscular functioning in the morning and is now affecting her independent ability to rise from bed/chair. She is in need of assist to safely complete the task when this condition flares up 2 – 3x/week.

Mobility – Level 0 – Petitioner is using a standard walker around her home consistently to maintain balance and uses rollator in community. She had a recent fall and reports instability and likelihood of repeat falls without DME to depend on.

Meal Preparation – Level 1- Petitioner is independent with meal preparation. She requires physical assist with grocery shopping due to

back spasms. She is unable to manage grocery bags due to unsteady gait and dependence on DME.

Laundry/Chores – Level 1 – Petitioner is independent with laundry but requires assist on “bad days” when conditions present physical strain which can exacerbate asthma. She requires assist to complete weekly household chores and cleaning.

Transportation – member is no longer driving due to vision and physical deficits.

The screener found the Petitioner to be independent in all other activities of daily living (ADLs) and Instrumental Activities of Daily Living (IADLs). The agency found the Petitioner is not eligible for FC at a Nursing Home LOC.

DISCUSSION

The Family Care and Family Care Partnership programs, supervised by the Department of Health Services, are designed to provide appropriate long-term care services for physically/developmentally disabled or elderly adults. See, Wis. Stat. §46.286, and Wis. Admin. Code ch. DHS 10. The DHS contract with its local care management agencies includes citation to Wis. Admin. Code ch. DHS 10 as a source of legal authority for program eligibility and operations.

In order to qualify for FC services, with certain exceptions not applicable here, a person’s functioning must be such that they would otherwise require institutional care. Wis. Stat. §46.286(1)(a). To be found eligible, the applicant must undergo an assessment of his/her needs and functioning.

The Wisconsin Department of Health Services made efforts to improve the statewide efficacy of functional assessments by designing and implementing a computerized functional assessment screening system. This system relies upon a face-to-face interview with a trained quality assurance screener. The screener met with the petitioner as part of the reassessment process. In this case, the Petitioner’s testimony is consistent with the findings of the LTCFS conclusions from the review on May 3, 2014 regarding the Petitioner’s needs. Current policy requires the Department’s local agent/screener to then enter this data into the Department’s functional screen computer program. See <http://dhs.wisconsin.gov/LTCare/FunctionalScreen/Index.htm>. The Level of Care (LOC) Functional Screen form and program reiterate the skeletal definitions from the federal Medicaid rules for Intermediate Nursing Care and institutional Developmental Disability facilities. When the petitioner’s functional ability scores were entered into the DHS algorithm, the result was a DHS conclusion that the petitioner does not have care needs at the nursing home level. Thus, the petitioner was found to be ineligible going forward, consistent with the DHS-directed result.

However, the computer program infrequently yields a result that is not consistent with state code. Wis. Admin. Code § DHS 10.33(2)(c) describes comprehensive (a/k/a nursing home) functional capacity:

(2) DETERMINATION OF FUNCTIONAL ELIGIBILITY.

(a) Determination. Functional eligibility for the family care benefit shall be determined pursuant to s. 46.286 (1), Stats., and this chapter, ...

(c) Comprehensive functional capacity level. A person is functionally eligible at the comprehensive level if the person requires ongoing care, assistance or supervision from another person, as is evidenced by any of the following findings from application of the functional screening:

1. The person cannot safely or appropriately perform 3 or more activities of daily living.

2. The person cannot safely or appropriately perform 2 or more ADLs and one or more instrumental activities of daily living.
3. The person cannot safely or appropriately perform 5 or more IADLs.
4. The person cannot safely or appropriately perform one or more ADL and 3 or more IADLs and has cognitive impairment.
5. The person cannot safely or appropriately perform 4 or more IADLs and has cognitive impairment.
6. The person has a complicating condition that limits the person's ability to independently meet his or her needs as evidenced by meeting both of the following conditions:
 - a. The person requires frequent medical or social intervention to safely maintain an acceptable health or developmental status; or requires frequent changes in service due to intermittent or unpredictable changes in his or her condition; or requires a range of medical or social interventions due to a multiplicity of conditions.
 - b. The person has a developmental disability that requires specialized services; or has impaired cognition exhibited by memory deficits or disorientation to person, place or time; or has impaired decision making ability exhibited by wandering, physical abuse of self or others, self-neglect or resistance to needed care.

As evidenced by the May 3, 2014 screen, the Petitioner falls within the comprehensive functional capacity definition – she cannot safely/appropriately perform two ADLs and one IADL (see finding of fact #8 and DHS 10.33(2)(c)2). Thus, per code, she meets the comprehensive/nursing home level of care. Therefore, although the screening personnel followed their DHS instructions correctly, the discontinuance of the petitioner's FCP eligibility due to failure to meet the level of care requirement was incorrect. This decision is in accord with prior decisions. See DHS Case Nos. FCP/[REDACTED], FCP/[REDACTED], and FCP/[REDACTED].

CONCLUSIONS OF LAW

The petitioner remains functionally eligible for FC at the nursing home level of care as defined in DHS 10 of the Wisconsin Administrative Code.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to continue the Petitioner's eligibility for the FCP at a nursing home level of care effective March 1, 2014. This action shall be taken within 10 days of the date of this Decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as

"PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

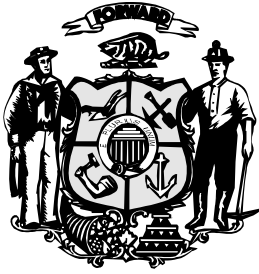
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 19th day of May, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 19, 2014.

Milw Cty Dept Family Care - MCO
Office of Family Care Expansion